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7 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 MICHAEL CHAVEZ,

10 Plaintiff,

11 v.

12 AMAZON WEB SERVICES, INC.,

13 Defendant.
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No. 2:21-cv-00007-BJR

DEFENDANT AMAZON WEB
SERVICES, INC.'S MOTION FOR
SUMMARY JUDGMENT

ORAL ARGUMENT REQUESTED

MOTION FOR SUMMARY JUDGMENT
(No. 2:21-cv-00007-BJR)

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I. INTRODUCTION

Mr. Chavez asserts claims of discrimination, retaliation, and wrongful termination. The undisputed facts, however, conclusively demonstrate that each claim fails as a matter of law.

Amazon did not discriminate against Mr. Chavez. To the contrary, Amazon worked tirelessly with Mr. Chavez to identify a reasonable accommodation for his disability. Most importantly, ***Mr. Chavez accepted the proposed accommodation, and his doctor confirmed the accommodation was medically sufficient.*** This is the very antithesis of discrimination.

Nor did Amazon retaliate against Mr. Chavez. Indeed, Mr. Chavez did not suffer any adverse action. The only conceivably “adverse” action taken by Amazon—choosing not to give Mr. Chavez a raise in 2019—was due not to Mr. Chavez’s disability but instead his poor performance. In 2018, *the year before Mr. Chavez took disability leave*, Mr. Chavez received the lowest performance rating—“Least Effective”—making him ineligible for a pay increase in 2019 as a matter of Amazon policy. To state the obvious, Amazon’s actions based on events occurring prior to learning of Mr. Chavez’s disability cannot be retaliatory.

Lastly, Mr. Chavez was not terminated. He resigned. And his alleged reasons for resigning—which are tantamount to frustration that he received negative feedback—are wholly insufficient to support a claim of constructive discharge.

Instead of proving discrimination or retaliation, the undisputed facts show Amazon worked closely with Mr. Chavez to accommodate his disabilities *despite* the fact Mr. Chavez was underperforming as an Amazon employee. In fact, evidence suggests Mr. Chavez manufactured conditions he believed would prompt Amazon to settle when he sued. His scheme should not be rewarded. Each of Mr. Chavez’s claims fails as a matter of law and should be dismissed.

II. STATEMENT OF FACTS

A. Chavez struggled to meet performance expectations.

Michael Chavez began working at Amazon as a business analyst on September 5, 2017. *See* Declaration of Kevin J. Hamilton in support of Defendant’s Motion for Summary Judgment (“Hamilton Decl.”) at ¶ 2, Ex. A, p. 5 (PLTF 000004). He struggled to meet expectations from the very beginning. In his first performance evaluation, Mr. Chavez’s peers and manager noted the following deficiencies in his performance:

“Michael needs to understand the business requirements over his own areas of growth. He has a constant struggle with [E]xcel and legacy reports that he needs to find a way to resolve rather than get more entangled and frustrated with.”

“Mike tends to rely on others for decisions even when he is the owner/customer. I think he’ll grow best by becoming more independent and taking on more of that ambiguity himself. This will allow the team to move faster.”

“[I] [s]uggest communicating business reporting requirements clearly, and focus on the main outcomes, and leave out unnecessary details.”

“[I] [s]uggest [Michael] focus on getting the building blocks right, before moving on to the next level; for instance[,] document meeting minutes and send post-meeting to confirm everyone is on the same page; confirm your assumptions with stakeholders; support your recommendations/requirements with data.”

Hamilton Decl. at ¶ 3, Ex. B, p. 12-13 (AMZN_00000270-71). These issues persisted into 2018. Mr. Chavez missed deadlines, sent reports with inaccurate information to customers, and unnecessarily escalated issues for resolution by supervisors. Declaration of Jennifer Zumek (“Zumek Decl.”) at ¶ 2, Ex. A, p. 6-7 (AMZN_00000097-98). In sum, Mr. Chavez struggled with the fundamentals and, as a result, was often unable to work independently.

As a result of these challenges, Mr. Chavez earned a “Least Effective” rating in 2018. Zumek Decl. at ¶ 3, Ex. B, p. 9 (AMZN_00000230). This was the lowest of three possible performance ratings employees could be assigned during the evaluation process. Zumek Decl. at ¶ 4.

Mr. Chavez's manager, Samir Kopal, met with Mr. Chavez on March 30, 2018 and told Mr. Chavez he was not meeting expectations. Zumek Decl. at ¶ 2, Ex. A, p. 7 (AMZN_00000098). At that time, Mr. Chavez was added to the "Dev List," short for "Development List." *See id.* The Development List is a tool that managers use to document coaching provided to struggling employees and track the employee's progress. Accordingly, in the March 30, 2018 meeting, Mr. Kopal explained he would be "working closely with [Mr. Chavez] to drive focused improvement" in his performance moving forward. *Id.* The pair met again less than one week later to discuss next steps and develop a plan to get Mr. Chavez back on track. *Id.*; Declaration of Samir Kopal ("Kopal Decl.") at ¶ 2, Ex. A, p. 4 (AMZN_00000482).

B. Amazon repeatedly extends Chavez's leave of absence at his request.

In April 2018, Mr. Chavez visited Dr. Mark Holmes, a neurologist who specializes in epilepsy. Hamilton Decl. at ¶ 4, Ex. C, p. 18-20 (Deposition of Dr. Mark Holmes ("Holmes Dep.") at 14:23-15:6; 17:13-15). Mr. Chavez had been seeing Dr. Holmes off and on since May 2016 in connection with epileptic episodes he experienced once or twice per month. *Id.* at p. 21-22 (Holmes Dep. at 23:7-13; 23:22-24:16).

During his April 2018 visit with Dr. Holmes, Mr. Chavez indicated he was interested in taking a leave of absence from work. Hamilton Decl. at ¶ 5, Ex. D, p. 42-43 (Chavez Dep. at 64:19-65:13). Dr. Holmes prepared and submitted paperwork in support of Mr. Chavez's request to take a leave of absence beginning June 1, 2018. Hamilton Decl. at ¶ 4, Ex. C, p. 23 (Holmes Dep. at 30:12-24). Amazon approved Mr. Chavez's request for leave. Zumek Decl. at ¶ 5, Ex. C, p. 14 (AMZN_00000093).

Although initially Dr. Holmes estimated Mr. Chavez would be able to return to work by September 1, 2018, Mr. Chavez requested to extend his leave three times, pushing his return-to-work date to January 2, 2019, then February 7, 2019, and ultimately February 19, 2019. Hamilton Decl. at ¶ 4, Ex. C, p. 23 (Holmes Dep. at 30:12-24); *id.* at ¶ 5, Ex. D, p. 44-45 (Chavez Dep. at 101:21-102:2). Amazon granted all of Mr. Chavez's requests to extend his leave. *Id.* at p. 45

(Chavez Dep. at 102:3-7). Notably, Mr. Chavez notified Amazon of his request for leave *after* he had been placed on the “Dev List” for his poor performance and received the “Least Effective” rating.

C. Amazon and Chavez engaged in an interactive dialogue and agreed to a reasonable accommodation.

At the end of his leave, Mr. Chavez emailed Amazon asking for an accommodation upon his return to work. Declaration of Heidi Kucera Taylor (“Kucera Taylor Decl.”) at ¶ 3, Ex. A, p. 6-7 (AMZN_00000389-90). Mr. Chavez requested (1) a private area to rest after having an epileptic seizure, (2) permission to work from home after a seizure “as needed,” and (3) flexible start times after a seizure, again “as needed.” *Id.* The paperwork Dr. Holmes submitted in support of Mr. Chavez’s request for accommodation recommended only that Amazon allow Mr. Chavez “flexible start and end times on workdays when he has seizures.” Hamilton Decl. at ¶ 4, Ex. C, p. 26 (Holmes Dep. at 41:8-19).

The day after receiving Mr. Chavez’s request, Amazon sent a follow up email which explained the accommodations process and provided Mr. Chavez with the necessary forms. Hamilton Decl. at ¶ 9, Ex. H, p. 88-91 (PLTF 000218-221). That email emphasizes “[y]our participation in the interactive accommodation process is required so that we can explore all potential accommodation solutions.” *Id.* at p. 90 (PLTF 000220). At this point, Mr. Chavez also spoke with Amazon’s Regional Accommodations Manager Heidi Kucera Taylor about his needs and the accommodations process. Kucera Taylor Decl. at ¶ 4, Ex. B, p. 9-11 (PLTF 000228-30). The pair proceeded to communicate regularly for more than two months regarding Mr. Chavez’s requested accommodations. *See* Kucera Taylor Decl. at ¶ 2.

When Mr. Chavez first requested an accommodation in February 2019, his seizures occurred about once a month. Hamilton Decl. at ¶ 4, Ex. C, p. 24-25, 27 (Holmes Dep. at 38:10-39:24; Holmes Dep. at 43:1-14). Dr. Holmes’ recommendation mirrored that fact, and he recommended that Mr. Chavez be allowed flexible start and end times on days he had seizures,

1 once or twice per month. *See id.* at p. 27 (Holmes Dep at 43:1-14). Amazon proposed an
 2 accommodation that would do just that. Hamilton Decl. at ¶ 6, Ex. E, p. 55 (PLTF_000207).
 3 Despite the fact Amazon’s proposed accommodation mirrored the request *from his own doctor*,
 4 Mr. Chavez rejected the proposal. *See id.* at p. 56 (PLTF_000208). Instead, contrary to what he
 5 and Dr. Holmes initially indicated, Mr. Chavez changed his request to seek an accommodation
 6 that would allow him to work from home two days *per week*. *Id.* Ms. Kucera Taylor explained
 7 Amazon may not be able to support that specific accommodation, but said “we can certainly review
 8 together” as soon as Amazon received updated paperwork from Dr. Holmes. *Id.* (PLTF_000208-
 9 09).

10 On April 5, 2019, Amazon received an updated accommodation request from Dr. Holmes
 11 that recommended “flexible start and end times on workdays when [Mr. Chavez] has seizures” and
 12 “working from home two times a week *as needed if available*.” Hamilton Decl. at ¶ 4, Ex. C, p.
 13 28-30 (Holmes Dep. at 45:2-7; 46:4-6; 46:25-47:11) (emphasis added). Dr. Holmes testified “as
 14 needed” meant Mr. Chavez should be allowed to work from home “if he actually had an episode
 15 or felt one coming on.” *Id.* at p. 30-31 (Holmes Dep. at 47:18-48:4). He also clarified that Mr.
 16 Chavez did not need to work from home unless he was having an epileptic episode. *Id.* at p. 31-
 17 32 (Holmes Dep. at 48:5-7; 49:8-11) (“Q: And you certainly were—were not suggesting that Mr.
 18 Chavez needed to work from home two days a week every week on a going-forward basis? A: No.
 19 No.”).

20 After receiving the updated request from Mr. Chavez and his doctor, Ms. Kucera Taylor
 21 connected with Mr. Kopal to discuss the revised request. Mr. Kopal explained it was not feasible
 22 for Mr. Chavez to work from home twice each week both because Mr. Chavez was the only
 23 business analyst on his team and because Mr. Chavez was still receiving in-person coaching as
 24 part of the performance improvement plan begun before he went on leave. Kucera Taylor Decl. at
 25 ¶ 5, Ex. C, p. 19 (AMZN_00000381). Although the business was unable to support Mr. Chavez’s
 26

1 exact request to work from home two times each week, Mr. Kopal asked what other options
2 Amazon could pursue to accommodate Mr. Chavez. *Id.*

3 Ultimately, Ms. Kucera Taylor proposed a compromise. She asked if Mr. Chavez would
4 be willing to try the following accommodation for ninety days: (1) work from home and flex
5 start/end times up to two days per month and (2) intermittent leave up to two days per month.
6 Hamilton Decl. at ¶ 6, Ex. E, p. 61-62 (PLTF 00000213-14). After those initial ninety days, the
7 parties could reassess and determine if the accommodations were sufficient. On April 23, 2019,
8 Mr. Chavez agreed to pilot the proposed accommodation. *Id.* at p. 64 (PLTF 000216). The
9 accommodation was fully approved and implemented within the week. Kucera Taylor Decl. at ¶
10 2.

11 **D. Chavez resigned from his position.**

12 Just a week after Mr. Chavez agreed to Amazon's proposed accommodation, he emailed
13 Jennifer Zumek, Senior Human Resources Business Partner, on May 2, 2019 indicating he
14 intended to resign. Hamilton Decl. at ¶ 7, Ex. F, p. 73-74 (PLTF 000238-39). Contrary to what Mr.
15 Chavez alleges in his complaint, Ms. Zumek responded in less than twenty-four hours. *Compare*
16 *id.* (PTF 000237) *with* Dkt. # 8 at p. 6, ¶ 3.17 ("...Mr. Chavez submitted an email to his HR
17 representative Jennifer Zumek, informing her of his intent to resign. She did not respond.").

18 In his May 2 resignation email, Mr. Chavez raised—for the first time—concerns about
19 Mr. Kopal's behavior. Christina Manegold, who was in the process of stepping into Ms. Zumek's
20 human resources role, followed up immediately and repeatedly seeking additional information
21 about the allegations. Hamilton Decl. at ¶ 7, Ex. F, p. 67 (PLTF 000232). Soon after, Mr. Chavez
22 stopped responding to Amazon's inquiries. *See id.* His last day at Amazon was May 17, 2019. *Id.*

23 But as it turns out Mr. Chavez had been planning to leave Amazon *all along*, since at least
24 April 2018. Hamilton Decl. at ¶ 8, Ex. G, p. 78-81 (CHAVEZ 662, 667, 669-70) ("I can laugh
25 now, but when I thought I had to stay here, I was losing it;" "I hate this line of work ... So, that's
26 why I'm quitting and not going to take another analyst job Haha[.]"); *see also id.* at ¶ 5, Ex. D, p.

46-47 (Chavez Dep. at 106:24-107:17) (“I did apply to many jobs during my medical leave...”). In fact, he had been planning to leave *and sue* in hopes of collecting a settlement, according to text messages he sent friends around the same time. Mr. Chavez texted a friend explaining, “I pulled the trigger, sent [human resources] a resignation letter ... and got an attorney[.] [T]hey’re going to end up paying me something.” Hamilton Decl. at ¶ 8, Ex. G, p. 82 (CHAVEZ 0674); *see also id.* at p. 85 (CHAVEZ 679) (“The Sr leaders love him [Mr. Kopal] [w]hich is why I knew going to them was futile [*s/o I waited and let him spout off* [.]” (emphasis added)). In a conversation with a different friend, Mr. Chavez elaborated on his motivations to sue:

Friend: Well hopefully you get a good penny from them[.] Cover your time in school[.]

Chavez: [Y]eah, I hope so otherwise it’s loan loan loans[.]

Id. at p. 86 (CHAVEZ 0682).

And, indeed, four months after resigning, Mr. Chavez enrolled full-time in his graduate program at the University of Washington, Bothell in September 2019. Hamilton Decl. at ¶ 5, Ex. D, p. 40-41 (Chavez Dep. at 38:18-39:8). He filed this lawsuit on January 4, 2021 and amended his Complaint February 5, 2021. *See generally* Dkt. Nos. 1, 8.

III. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate if the evidence, when viewed in the light most favorable to the non-moving party shows “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Beaver v. Tarsadia Hotels*, 816 F.3d 1170, 1177 (9th Cir. 2016). A fact is “material” if it might affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is “‘genuine’ only if there is sufficient evidence for a reasonable fact finder to find for the non-moving party.” *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 992 (9th Cir. 2001) (citing *Anderson*, 477 U.S. at 248-49).

IV. ARGUMENT

Mr. Chavez brings essentially three claims against Amazon: (1) violations of the Americans with Disabilities Act, 42 U.S.C. § 12101-02; (2) violations of Washington's Law Against Discrimination, RCW 49.60 et seq.; and (3) wrongful termination in violation of public policy. Compl. ¶¶ 4.1-6.5. There is no dispute as to any material facts regarding these claims, each of Mr. Chavez's claims is fully rebutted by uncontested facts, and each claim fails as a matter of law.

A. Chavez's discrimination and retaliation claims fails as a matter of law.¹

While the exact parameters of Mr. Chavez's discrimination and retaliation claims are unclear from his complaint, any such claims fail as a matter of law because Mr. Chavez cannot establish at least one necessary element of the claims.

Discrimination. There are two types of discrimination claim under the WLAD and the ADA: (1) failure to accommodate and (2) disparate treatment. *See Shaffstall v. Old Dominion Freight Line, Inc.*, __ F. Supp. 3d __, 2020 WL 1515621, at *5 (W. D. Wash. 2020). It is not clear from his complaint which type of claim Mr. Chavez intends to bring, but in either event both fail.

To prevail on a failure to accommodate theory under either federal or state law, Mr. Chavez must prove (1) he is a qualified individual with a disability, (2) Amazon knew about his disability and the ways in which it limited his work, and (3) Amazon failed to make reasonable accommodations for those limitations. *See Thompson v. Microsoft Corp.*, 2 F.4th 460, 467 (5th Cir. 2021); *Gibson v. Costco Wholesale, Inc.*, 488 P.3d 869, 877-78 (Wash. Ct. App. 2021). Even if Mr. Chavez meets the first two elements, any failure to accommodate claim he is asserting fails for the simple reason Amazon did, in fact, accommodate Mr. Chavez.

Alternatively, Mr. Chavez may attempt to advance a disparate treatment theory in connection with his discrimination claims. Here too, the prima facie case is the same under federal

¹ Because the fundamental elements of Mr. Chavez's discrimination and retaliation claims overlap, they are discussed together.

1 and state law. To prevail, Mr. Chavez must show he (1) was a member of a protected class, (2)
 2 was doing satisfactory work, and (3) was subject to an adverse employment action because of his
 3 disability. *Marin v. King Cnty.*, 378 P.3d 203, 211-12 (Wash. Ct. App. 2016); *Fowler v. AT&T*,
 4 *Inc.*, 19 F.4th 292, 298-99 (3d Cir. 2021). Again, even assuming the first two elements, Mr. Chavez
 5 cannot show he was subject to any adverse employment actions, let alone that he was subject to
 6 such an action *because* of his disability.

7 *Retaliation.* Like Mr. Chavez’s discrimination claims, his retaliation claims are subject to
 8 the same basic standard under both federal and state law. To prevail, Mr. Chavez must show (1)
 9 he engaged in protected activity, (2) he was subject to an adverse employment action, and (3) there
 10 is a causal link between his protected activity and the alleged adverse employment action. *See*
 11 *Brooks v. City of San Mateo*, 229 F.3d 917, 928 (9th Cir. 2020) (citation omitted); *McElwain v.*
 12 *Boeing Co.*, 244 F. Supp. 3d 1093, 1100 (W.D. Wash. 2017) (citing *Daniel v. Boeing Co.*, 764 F.
 13 Supp. 2d 1233, 1245 (W.D. Wash. 2011)).

14 Mr. Chavez’s retaliation claims fail for the same reason his disparate treatment claims fail:
 15 he cannot show he was subject to an adverse employment action, and even if he could, there is no
 16 evidence causally linking such action to his disability.

17 **1. Amazon offered—and Chavez agreed to—a reasonable accommodation.**

18 Mr. Chavez’s discrimination claim fails as a matter of law because Amazon provided him
 19 with a reasonable accommodation. “An employer is not obligated to provide an employee the
 20 accommodation he requests or prefers, the employer need only provide some reasonable
 21 accommodation.” *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1089 (9th Cir. 2002) (citation
 22 omitted).² Instead, employers and employees are expected to engage in an interactive dialogue to

23
 24 ² *See also, e.g., Smith v. CSRA*, 12 F.4th 396, 414 (4th Cir. 2021) (“But an employer is not required to provide
 25 the exact accommodation that the employee requested, and in the alternative may provide an alternate reasonable
 26 accommodation...”) (internal quotation marks and citation omitted); *Igasaki v. Illinois Dep’t of Fin. & Pro. Regul.*,
 988 F.3d 948, 961 (7th Cir. 2021) (“[I]t is the employer’s prerogative to choose a reasonable accommodation; an
 employer is not required to provide the particular accommodation that an employee requests.”) (internal quotation
 marks and citation omitted); *Brunckhorst v. City of Oak Park Heights*, 914 F.3d 1177, 1182-83 (8th Cir. 2019) (“[A]n
 employer is not required to accommodate an employee based on the employee’s preference.”) (citation omitted); *Noll*

1 identify a *reasonable* accommodation. The regulations governing implementation of the ADA
 2 explain that “[t]o determine the appropriate reasonable accommodation it may be necessary for the
 3 [employer] to initiate an informal, interactive process with the qualified individual with a disability
 4 in need of an accommodation. This process should identify the precise limitations resulting from
 5 the disability and potential reasonable accommodations that could overcome those limitations.” 29
 6 C.F.R. § 1630.2(o)(3). Absent undue hardship, employers are required to provide *reasonable*
 7 accommodations to employees with disabilities. 29 C.F.R. § 1630.2(o)(4). Amazon did just that.
 8 Indeed, soon after receiving Mr. Chavez’s request, Amazon proposed an accommodation
 9 consistent with Mr. Chavez’s request and the recommendations provided by Mr. Chavez’s doctor.
 10 Hamilton Decl. at ¶ 4, Ex. C, p. 26 (Holmes Dep. at 41:8-19); *id.* at ¶ 6, Ex. E, p. 55
 11 (PLTF_000207).

12 Mr. Chavez rejected Amazon’s proposal. He then revised his request, seeking to be allowed
 13 to work from home two times a week, as needed.

14 Amazon then continued its work with Mr. Chavez to identify a reasonable accommodation.
 15 Amazon’s Regional Accommodations Manager, Heidi Kucera Taylor, maintained regular
 16 communication with Mr. Chavez over the next two months, working to identify an accommodation
 17 that met the needs of both Mr. Chavez and Amazon’s business. *See, e.g.*, Kucera Taylor Decl. at ¶
 18 6, Ex. D, p. 24-25 (AMZN_00000041-42); *id.* at ¶ 7, Ex. E, p. 28-32 (AMZN_00000084-88).

19 Ultimately, Ms. Kucera Taylor proposed a temporary, 90-day accommodation that allowed
 20 Chavez to work from home up to two days each month and take up to two days of intermittent
 21 leave each month. Hamilton Decl. at ¶ 6, Ex. E, p. 61-62 (PLTF 00000213-14). After those ninety
 22 days, Amazon would work with Mr. Chavez to determine if the accommodation plan needed to be
 23

24 _____
 25 *v. Int’l Bus. Machs. Corp.*, 787 F.3d 89, 95 (2d Cir. 2015) (“[E]mployers are not required to provide a perfect
 26 accommodation or the very accommodation most strongly preferred by the employee.”) (citing 29 C.F.R. § 1630 app.
 (“[Although] the preference of the individual with a disability should be given primary consideration[,] ... the
 employer providing the accommodation has the ultimate discretion to choose between effective
 accommodations... .”)).

1 adjusted. *Id.* Mr. Chavez replied “As I would not incur any financial hardship in accordance with
 2 it, *I can agree to try the modified accommodations you’ve suggested.*” *Id.* at p. 63 (PLTF 000215).

3 Mr. Chavez’s agreement to the proposed accommodation is fatal to his discrimination
 4 claim. That is because, as should be obvious, if an employee *agrees* to a proposed accommodation,
 5 the company has not failed to accommodate him. *Cf. Laird v. Fairfax Cnty.*, 978 F.3d 887, 894
 6 (4th Cir. 2020) (holding there is no adverse action where employer and employee mutually agree
 7 to job transfer); *EEOC v. JBS USA, LLC*, 339 F. Supp. 3d 1135, 1179 (D. Colo. 2018) (holding
 8 employer provided reasonable accommodation when accommodation was negotiated and accepted
 9 by employees).

10 And Mr. Chavez’s doctor, Dr. Holmes, *confirmed* that this agreed upon accommodation
 11 met Mr. Chavez’s medical needs. *See* Hamilton Decl. at ¶ 4, Ex. C, p. 33 (Holmes Dep. at 58:12-
 12 17) (“Q: ...[A]s long as the employer was flexible in providing intermittent leave to be able to
 13 work from home ... if and when an episode occurred ... that would have addressed [Chavez’s]
 14 medical needs, right? A: I believe so, yes.”); *Tchankpa v. Ascena Retail Grp., Inc.*, 951 F.3d 805,
 15 813 (6th Cir. 2020) (holding employer had no duty to grant accommodation request to work from
 16 home three days per week where there was no medical documentation showing Plaintiff’s
 17 disability *required* he work from home that often). Thus, there is no dispute that Amazon offered
 18 an accommodation, Mr. Chavez accepted that accommodation, and that accommodation was
 19 reasonable and met Mr. Chavez’s medical needs. As such, Mr. Chavez’s discrimination claim
 20 necessarily fails.

21 Moreover, Mr. Chavez repeatedly admitted during his deposition that he and Ms. Kucera
 22 Taylor engaged in an interactive dialogue of the exact kind contemplated by the ADA and WLAD.
 23 Mr. Chavez confirmed, for example, that Ms. Kucera Taylor was “engaging in a dialogue with
 24 [him] about what [he] need[s] and what [he’s] requesting and what the doctor is supporting.”
 25 Hamilton Decl. at ¶ 5, Ex. D, p. 48 (Chavez Dep. at 122:17-25). Mr. Chavez again confirmed the
 26 nature of his interactions with Ms. Kucera Taylor when the question was posed a different way:

1 “Q: Fair to say that was a two-way street? It was an interactive
2 dialogue. You’re asking. She’s responding. You’re providing
3 additional input. She’s responding, right? A: Yes.” *Id.*

4 And again:

5 “Q: So she was—she was proposing another way around this if Mr.
6 Kopal couldn’t agree to two days per week, right? A: Well, another
7 way around what? Q: Providing you an accommodation. She was
8 trying to be creative to solve the problem, right? A: Yeah. *She was*
9 *certainly trying to provide options.*” *Id.* (Chavez Dep. at 131:24-
10 132:6) (emphasis added).

11 Like Ms. Kucera Taylor, Mr. Chavez’s manager expressed a desire to explore various
12 options to accommodate Mr. Chavez. Although at the time the business was unable to support Mr.
13 Chavez’s revised accommodation request to work from home twice each week, Mr. Kopal asked
14 Ms. Kucera Taylor to “[p]lease let [him] know what are the other options (if any).” Kucera Taylor
15 Decl. at ¶ 5, Ex. C, p. 19 (AMZN_00000381). In sum, Mr. Kopal and Ms. Kucera Taylor worked
16 with one another and with Mr. Chavez to identify a reasonable accommodation that met the needs
17 of the business while allowing Mr. Chavez to perform his job. The law requires nothing more.

18 Mr. Chavez cannot offer any evidence to dispute Amazon engaged in an interactive
19 dialogue with him. Nor can he dispute that interactive dialogue resulted in a medically adequate
20 accommodation *to which he agreed*. As such, his accommodation claim fails as a matter of law.

21 **2. There is no evidence Chavez suffered an adverse employment action at all,
22 let alone because of his disability.**

23 To prevail on his disparate treatment discrimination claim, as well as on his retaliation
24 claims, Mr. Chavez must show both that he was subject to an adverse employment action and that
25 there is causal link between that adverse action and his disability. *See Marin*, 378 P.3d at 211-12
26 (outlining prima facie disparate treatment case under the WLAD); *Fowler*, 19 F.4th at 298-99
(same for ADA); *Brooks v. City of San Mateo*, 229 F.3d 917, 928 (9th Cir. 2000) (citation omitted)
(outlining prima facie retaliation case under the ADA); *McElwain v. Boeing Co.*, 244 F. Supp. 3d
1093, 1100 (W.D. Wash. 2017) (citing *Daniel v. Boeing Co.*, 764 F. Supp. 2d 1233, 1245 (W.D.
Wash. 2011)) (same for WLAD). The causal element of his discrimination claim is particularly

1 demanding: Mr. Chavez “must show that the adverse employment action would not have occurred
2 but for the disability.” *Murray v. Mayo Clinic*, 934 F.3d 1101, 1105 (9th Cir. 2019).

3 Mr. Chavez cannot satisfy either required element. As explained above, in response to Mr.
4 Chavez’s request, Amazon provided reasonable accommodations to which Mr. Chavez agreed.
5 Hamilton Decl. at ¶ 6, Ex. E, p. 61-62 (PLTF 00000213-14). This is hardly “adverse action.” Mr.
6 Chavez claims Amazon did not increase his pay in 2019, but Amazon had a legitimate, non-
7 discriminatory reason for doing so: he was a poor performer. That’s an obviously appropriate
8 reason to not provide a raise. Finally, Amazon did not terminate Mr. Chavez; *he resigned*. These
9 are not “adverse actions” and, regardless, Mr. Chavez does not offer even a scintilla of evidence
10 that those actions would not have occurred but for his disability. His discrimination and retaliation
11 claims thus fail as a matter of law.

12 **a. Chavez resigned and was not constructively discharged.**

13 Resignations like Mr. Chavez’s are presumed to be voluntary. *See Washington v. Boeing*
14 *Co.*, 19 P.3d 1041, 1049 (Wash. Ct. App. 2000) (citation omitted). Just a week after accepting
15 Amazon’s proposed accommodation, Mr. Chavez emailed Human Resources Business Partner
16 Jennifer Zumeck on May 2, 2019 indicating he intended to resign. Hamilton Decl. at ¶ 7, Ex. F, p.
17 72-74 (PLTF 000237-39); Dkt. # 8 at ¶ 3.17. Because Mr. Chavez was not terminated, he must
18 show he was constructively discharged to establish an adverse employment action. He must show
19 (1) a deliberate act by Amazon that made his working conditions so intolerable that a reasonable
20 person would have felt compelled to resign and (2) that he resigned because of the conditions and
21 not for some other reason. *Washington*, 19 P.3d at 1049 (citation omitted). To determine whether
22 Amazon acted deliberately, “[t]he court looks to the employer’s words or acts to determine if there
23 is an intention to dispense with the employee’s services.” *Kaplan v. GridPoint, Inc.*, No. C09-
24 0468JLR, 2010 WL 2376228, at *12 (W.D. Wash. June 9, 2010) (citing *Barrett v. Weyerhaeuser*
25 *Co. Severance Pay Plan*, 700 P.2d 338, 342 (Wash. Ct. App. 1985)). “There must be evidence
26 presented that an employer has *deliberately* acted to make an employee’s working conditions so

intolerable that the employee was forced to resign.” *Gibson*, 397 F. Supp. 2d at 1281 (emphasis added) (citations omitted). “The existence of unlawful discrimination alone is insufficient to support a finding of constructive discharge from employment.” *Id.*

Mr. Chavez cannot show Amazon or his manager Mr. Kopal deliberately made his working conditions intolerable. Courts regularly reject constructive discharge claims based on work environments far more intolerable than the one alleged here. For example, employees’ constructive discharge claims were dismissed even where their supervisors made a series of offensive sexual and racist comments over the span of five years. *See Crownover v. State ex rel. Dept. of Transp.*, 265 P.3d 971, 975-75, 980-81 (Wash. Ct. App. 2011); *see also, e.g., Garrison v. Dolgencorp, LLC*, 939 F.3d 937, 943 (8th Cir. 2019) (granting summary judgment on ADA claim where immediate supervisor spread rumors Plaintiff planned to quit and told Plaintiff certain privileges and full-time employment would be revoked because these things are “petty slights and minor annoyances that, though upsetting, are not actionable”). More specifically, the *Crownover* Court dismissed constructive discharge claims where multiple supervisors threatened plaintiffs with closing their facility and transferring them to a different location, “told many racial and sexual jokes,” and “bullied employees by yelling in their faces.” *Id.* at 975-76.

Even if taken as true, Mr. Chavez’s allegations regarding the working conditions at Amazon are far less severe than those considered in *Crownover*. Indeed, Mr. Chavez alleges nothing more than personal frustration with Mr. Kopal, claiming only that Mr. Kopal “micromanage[d]” Mr. Chavez, “watched [him] like a hawk”, gave him negative feedback, and reprimanded him and the rest of the team. Hamilton Decl. at ¶ 5, Ex. D, p. 51-52 (Chavez Dep. at 203:16-204:11) (Mr. Chavez identifying the reasons he resigned).³ As the *Crownover* Court explained, however, “[a]n employee’s frustration, and even receipt of direct or indirect negative

³ That most of Mr. Kopal’s direct reports continue to work for Amazon despite the allegation Kopal “castigated ... everyone” in the same way he allegedly castigated Mr. Chavez betrays that the alleged work environment was *not* so intolerable any reasonable person would have quit. In fact, other employees who were (allegedly) subject to the same type of comments as Chavez did not quit.

1 remarks, is not enough to show intolerable working conditions.” *Id.* at 981 (citing *Washington*, 19
2 P.3d at 1046-47). Mr. Chavez’s claims, like the claims in *Crownover*, should be dismissed.

3 Moreover, even if Mr. Kopal’s critiques of Mr. Chavez’s performance were sufficiently
4 extreme to sustain a constructive discharge claim (and they are plainly not), Mr. Chavez cannot
5 offer any evidence the critiques are related to his disability. In fact, Mr. Chavez was placed on the
6 “Development List” *before* he went on medical leave. Zumek Decl. at ¶ 2, Ex. A, p. 7
7 (AMZN_00000098) (showing Kopal first met with Chavez and placed him in performance
8 coaching March 30, 2018). More revealing still, text messages between Mr. Chavez and his close
9 friends show Mr. Chavez perceived tension between him and Mr. Kopal long before Mr. Chavez
10 requested an accommodation—even before he went on medical leave. *See e.g.*, Hamilton Decl. at
11 ¶ 8, Ex. G, p. 83-84 (CHAVEZ_0675) (“[S]o he [Kopal] hates me for sure ... I got his friend in
12 trouble ... (*this is jan 2018*).”) (emphasis added); (CHAVEZ_0676) (“[H]e puts everyone through
13 the ringer ... thinks he’s a super alpha, so when i [sic] challenge him on things about my SOW,
14 he tries to beat me into submission ... I don’t back down and end up going on leave [in 2018].”)
15 (emphasis added).

16 Mr. Chavez cannot establish he was constructively discharged and his resignation, by
17 definition, is not an adverse employment action.

18 **b. Chavez did not receive a raise because he was a poor performer.**

19 The only other alleged adverse action Mr. Chavez conceivably raises is the fact Amazon
20 did not increase his pay in 2019. But Mr. Chavez did not receive a pay increase in 2019 because
21 his performance in 2018 was inadequate. During that year’s review cycle, Mr. Chavez received a
22 rating of “Least Effective,” the lowest of three possible performance ratings. Zumek Decl. at ¶ 3,
23 Ex. B, p. 9 (AMZN_00000230); *id.* at ¶ 4. Employees who are rated “Least Effective” are ineligible
24 for pay increases as a matter of Amazon policy. *Id.* at ¶ 4. Mr. Chavez cannot provide any evidence
25 his pay remained flat because of his disability; his pay is, instead, consistent with, and indeed was
26 required by, company policy.

1 Because Mr. Chavez cannot establish that Amazon acted adversely towards him in any
 2 manner, his discrimination and retaliation claims necessarily fail as a matter of law. Likewise, Mr.
 3 Chavez's failure to provide any evidence connecting any purported "adverse" actions to his
 4 disability is fatal to his discrimination and retaliation claims. *Murray*, 934 F.3d at 1105.

5
 6 **B. Chavez's wrongful termination claim fails as a matter of law.**

7 Finally, Mr. Chavez's claim for wrongful termination in violation of public policy fails as
 8 a matter of law. To prevail, Mr. Chavez must show (1) the existence of a clear public policy; (2)
 9 that discouraging conduct in which he engaged would jeopardize the public policy; (3) that the
 10 public-policy-linked conduct caused his dismissal; and (4) that Defendant cannot offer an
 11 overriding justification for the dismissal. *Roe v. TeleTech Customer Care Mgmt. (Colorado) LLC*,
 12 257 P.3d 586, 595 (Wash. 2011).

13 Underpinning this claim is the presumption Mr. Chavez was terminated at all. He wasn't.
 14 That is undisputed and confirmed by Mr. Chavez's pleadings. Dkt. # 8 at ¶ 3.17 ("Mr. Chavez
 15 submitted an email to his HR representative, Jennifer Zumek, informing her of his intent to
 16 resign."). Again, Mr. Chavez's resignation is presumed voluntary unless he can show Amazon
 17 deliberately made his working conditions so intolerable any reasonable person would be compelled
 18 to resign. *See Washington*, 19 P.3d at 1049 (citation omitted); Hamilton Decl. at ¶ 7, Ex. F, p. 73-
 19 74 (PLTF 000238-39). As discussed above, he cannot. *See supra* Sec. IV.A.2.a.

20 **V. CONCLUSION**

21 For the reasons stated above, Defendant respectfully requests the court grant summary
 22 judgment and dismiss Mr. Chavez's claims.

1 Date: January 20, 2022

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CERTIFICATE OF SERVICE

I certify under penalty of perjury that on January 20, 2022, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send a notification of the filing to the email addresses indicated on the Court's Electronic Mail 2021 Notice List.

Dated: January 20, 2022

s/KC Davis
KC Davis